

IN THE
SUPREME COURT OF THE UNITED STATES

No. 79-6

CONNIE FERN MILLER,

Petitioner,

vs.

THE PEOPLE OF THE STATE
OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

MICHAEL J. PICHEL
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410 College Avenue
Ithaca, New York 14850
(607) 273-1600

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CONNIE FERN MILLER,

Petitioner,

vs.

THE PEOPLE OF THE STATE
OF NEW YORK,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUDGES OF THE SUPREME
COURT OF THE UNITED STATES OF AMERICA:

The above-named petitioner, Connie Fern Miller, by her attorney, Michael J. Pichel, hereby respectfully prays this Honorable Court for a Writ of Certiorari to review a judgment of the Broome County Court, Binghamton, New York, affirming a Judgment of Conviction and Sentence in the local Criminal Court of the Town of Barker, New York; and in support of said Petition for Writ of

Certiorari, respectfully shows and affirms, pursuant to Rule 23 of the Rules of the Supreme Court of the United States:

I.

The opinion of the Broome County Court, Binghamton, New York, from which petitioner herein makes application to this Court for a Writ of Certiorari has not been officially reported. A copy of the Letter Decision and Order of said Court is attached hereto and incorporated herein by reference as page A49 of Appendix. The Certificate Denying Leave to Appeal to the Court of Appeals of the State of New York is attached hereto and incorporated herein by reference as Page A50 of Appendix.

II.

A. The Judgment and Order of the Broome County Court, Binghamton, New York, sought to be reviewed by Writ of Certiorari was dated February 9, 1979 (page A49 of Appendix). Petitioner, Connie Fern Miller, then made application for Certificate Granting Leave to Appeal to the New York State Court of Appeals,

which application was denied by Certificate Denying Leave, dated April 4, 1979. The Local Criminal Court, Town of Barker, New York rendered its Judgment of Conviction and Sentence, from which petitioner appealed, on September 15, 1977 (see receipt for fine, A47). Appellant's Notice of Appeal dated September 30, 1977, is attached hereto and incorporated herein by reference as Page A48 of Appendix.

B. This Petition for Writ of Certiorari is timely filed within 90 days from the date of entry of the Certificate Denying Leave to Appeal to the New York State Court of Appeals.

C. The statutory provisions for the Court to review the Judgment and Order in question by Writ of Certiorari are as follows:

1. Rule 19 of the Rules of the Supreme Court of the United States.
2. 28 United States Code, Section 1257(3).

III.

The questions presented for review are as follows:

A. Whether defendant was entitled to dismissal of the charges against her by reason of the unexplained denial of defendant's right to a speedy trial, and for want of prosecution by the People.

B. Whether the Constitutional right to a speedy trial applies to traffic infraction charges in the State of New York.

C. Whether the Criminal Procedure Law of the State of New York, Section 30.30, which prescribes time limits for felonies, misdemeanors, and violations, is unconstitutional for the reason that it fails to include time limits for traffic infractions; or alternatively, whether the Courts below in the present case interpreted the said statute of the State of New York in an unconstitutional manner.

D. Whether the People established a prima facie case against defendant, where the People's only witness was unable to identify defendant at trial.

E. Whether defendant's motion to dismiss for failure of the People to prove a prima facie case against defend-

ant should have been granted.

F. Whether defendant was denied Due Process of Law, and her right to remain silent, by reason of her conviction even though the People's only witness was unable to identify her.

G. Whether New York State Vehicle and Traffic Law, Section 401(4), is unconstitutional, as creating a presumption of identity of a defendant, based upon defendant's production of a driver's license at the time of arrest, thereby dispensing with the requirement that the People prove each and every element of the crime charged, including identity, at the time of trial.

H. Whether the said statute and presumption is unconstitutional, as depriving defendant of Due Process of Law, the right to remain silent, and the right to be convicted upon proof beyond a reasonable doubt of each and every element of the offense charged, including identity.

IV.

The constitutional provisions,

treaties, statutes, ordinances and regulations which this case involves are as follows:

A. The Fourteenth Amendment to the Constitution of the United States of America (Due Process clause).

B. The Sixth Amendment to the Constitution of the United States of America (Right to a Speedy Trial).

C. The Fifth Amendment to the Constitution of the United States of America (Right to Remain Silent).

V.

The statutes of the State of New York sought to be reviewed are as follows:

A. Criminal Procedure Law of the State of New York, Section 30.30 (Speedy Trial; time limitations).

B. Vehicle and Traffic Law of the State of New York, Section 401(4), which provides in part as follows:

"The production of a license to a magistrate, inspector, officer or policeman shall be prima facie evidence in a prosecution for a violation of any provision of this chap-

"ter, *** that the person who so produced the license is the person identified on such license."

VI.

STATEMENT OF FACTS MATERIAL TO
CONSIDERATION OF QUESTIONS PRESENTED.

Petitioner was charged on February 10, 1977, by Uniform Traffic Ticket, with Speeding, a Traffic Infraction, in alleged violation of New York State Vehicle and Traffic Law, Section 1180(b) (A-1).

By letter dated February 15, 1977 to the Barker Town Justice, Attorney Michael J. Pichel entered an appearance for petitioner, and requested the name of the Assistant District Attorney handling the case, so that petitioner's attorney could contact him in this matter (A-12).

By letter dated February 17, 1977, petitioner learned that the Assistant District Attorney handling the matter was one Robert Rose (A-13). Petitioner's attorney then wrote to Robert Rose, Esq., on February 21, 1977 (A-14). By letter dated March 2, 1977, Robert Rose, Esq.,

indicated that he would not agree to have petitioner enter a plea to a reduced charge. (A-15).

Thereafter, on or about March 11, 1977, petitioner received a "Notice of Trial" dated March 10, 1977, purporting to set a trial date of March 24, 1977 (A-16), but, as petitioner had never been arraigned on the charges, nor entered any plea, petitioner's attorney, on or about March 20, 1977, wrote to Robert Rose, Esq., protesting that the said "Notice of Trial" was premature (A-17).

Following a telephone conversation with Hon. Duane Algire, Town Justice, Town of Barker, New York, petitioner's attorney, by letter dated March 24, 1977, entered a plea of Not Guilty on petitioner's behalf and requested New York State's statutory 45 days to make motions on petitioner's behalf (A-18).

This request for the statutory adjournment was the only request for an adjournment or delay occasioned by petitioner in this case. Except for petitioner's request for the statutory

45 days to make motions, petitioner was always ready, willing and able to have a trial upon these charges. Except for this 45 day time period, the delay herein was caused solely by the People and by want of prosecution, of the People.

On or about May 24, 1977, petitioner received a "Notice of Trial" setting a trial date for June 1, 1977 (A-19). Petitioner prepared for trial on that date, and was ready for trial on that date.

Then, on May 27, 1977, defendant received a "Notice of Adjournment", cancelling the trial date of June 1, 1977, at the instance and at the request of the People (A-20). The adjournment was caused solely by the People, not by petitioner, nor by the Court. At trial, the People offered no explanation whatsoever for cancellation of the trial date of June 1, 1977, nor was any good cause for the delay set forth. The Prosecutor stated:

"I cannot say specifically why there was no action on this case. Quite often it is caused by illness or

"inability to appear on the part of the (A35) State Trooper because their duties conflict with trial dates. I do not know, it is our practice not to ask for an adjournment unless there is a good reason and I assume in this case there is one, but I cannot in this case tell you exactly what it is."

(A36).

Petitioner heard nothing more in regard to this matter, until September 10, 1977, when petitioner received a "Notice of Trial" dated September 8, 1977, and setting a trial date for September 15, 1977, almost 8 months following the alleged Speeding incident, and over 3 months from the trial date of June 1, 1977, which was cancelled by the People, without explanation (A21).

Prior to trial, on or about September 14, 1977, petitioner forwarded a Notice of Motion and Supporting Affi-

davit (A-2 - A-22) to the Court and to the Prosecutor. No Answering Affidavit has ever been filed by the People in response to the motion papers of petitioner.

The said motion was for dismissal of the charges against petitioner for denial to petitioner of her statutory and constitutional right to a speedy trial; for want of prosecution; and in furtherance of justice. Following pre-trial argument, the Trial Court denied the motion to dismiss (A-25 - A-38).

At the trial, the People called, as their only witness, Trooper R. D. Selby. Trooper Selby was unable to identify defendant as the person to whom he had issued Uniform Traffic Ticket No. G673792 (A-43). Trooper Selby's testimony in this regard is as follows:

"Q. Is the individual to whom you issued that ticket in court today?

A. I can't identify her.

* * *

Q. Is the reason you were unable to identify the defendant due to a lack of recollection?

A. Well, I issued so many tickets since that time and see so many people, I just can't remember."
(A-43).

At the close of the People's case, petitioner moved for dismissal of the charges on the grounds that the People had failed to prove a prima facie case (A-44 - A-45), inasmuch as the People had failed to establish identity, and therefore had failed to prove beyond a reasonable doubt each and every element of the criminal offense charged. The petitioner's trial motion to dismiss was denied by the Trial Court (A-45). The Trial Court relied upon "a section in the Vehicle and Traffic Law" (A-44), which the Court believed obviated the need for proof by the People of

the petitioner's identity. The statute referred to by the Trial Court is New York State Vehicle and Traffic Law, Section 401(4), which creates a presumption of a defendant's identity, by reason of his prior production, upon arrest, of a New York State Driver's License, thereby requiring the defendant, if possible, to rebut the presumption of identity, and obviating the requirement that the People prove each and every element of the offense charged, beyond a reasonable doubt, including the element of identity.

Subsequently, petitioner took the stand on her own behalf, and upon cross-examination, admitted that she was the person to whom the ticket had been issued, but her testimony followed the Trial Court's denial of motion to dismiss made at the end of the People's case (A-44). The Trial Court did not reserve decision on the motion, but denied it outright (A-44).

At the end of the trial, the Court found defendant guilty as charged, and sentenced defendant to pay a fine of \$25.00 (A-47). Defendant's Notice of

Appeal, from the conviction and sentence was filed on or about September 30, 1977 (A-48).

By letter Decision and Order, the Broome County Court, Binghamton, New York, summarily affirmed petitioner's conviction and sentence (A49). Petitioner thereafter made timely application for leave to appeal to the New York State Court of Appeals. Certificate Denying Leave to Appeal to the New York State Court of Appeals was issued April 4, 1979 (A50).

Petitioner's contentions upon the within appeal are that the Trial Court erred in refusing to dismiss the charges against defendant on the grounds of deprivation of her right to a speedy trial, and for want of prosecution of the People; and further, that the People failed to establish, beyond a reasonable doubt, each and every element of the Criminal Offense charged (Speeding) for the reason that the People failed to prove the identity of the defendant at trial; and that Criminal Procedure Law, Section 30.30 is unconstitutional either on its

face, or as applied, for the reason that it fails to insure the right to a speedy trial in traffic infraction cases in the State of New York; and Vehicle and Traffic Law of the State of New York, Section 401(4) is unconstitutional as violative of Due Process of Law and the right to remain silent, for the reason that it purports to relieve the People of the requirement of proof beyond a reasonable doubt of each and every element of the offense charged, including identity of the defendant.

VII.

All questions sought to be reviewed herein were timely raised in the Trial Court, the local Criminal Court of the Town of Barker, New York. Petitioner's speedy trial claims were raised in a pre-trial written motion to dismiss for lack of a speedy trial, for want of prosecution of the People, and in furtherance of justice. Argument upon the said motion was heard prior to trial, and the motion was denied prior to trial. (A-2 - A-22; A-37 - A-38).

The People's only witness was unable to identify petitioner. At the close of the People's evidence, petitioner moved for dismissal of the charges, for failure of the People to prove a prima facie case and to prove each and every element of the criminal offense charged (Speeding), including the element of identity, beyond a reasonable doubt. The Trial Court denied the motion to dismiss, based upon the presumption created by New York State Vehicle and Traffic Law, Section 401(4).

Petitioner timely appealed to the Broome County Court, Binghamton, New York, and upon affirmance of petitioner's conviction and sentence, petitioner made timely application to the New York State Court of Appeals for permission to appeal to the Court of Appeals, which permission was denied.

VIII.

The Writ of Certiorari applied for herein ought to be granted for the following reasons:

1. The Sixth Amendment to the

Constitution of the United States affords to a criminal defendant, the right to a speedy trial. Decisions of this Court have held that less serious criminal charges, such as traffic infractions, should be tried in less time, not more time, than more serious offenses. The Trial Court held that petitioner had not been denied her right to a speedy trial, for the reason that New York State Criminal Procedure Law, Section 30.30, while prescribing time limitations for certain types of offenses, omits to prescribe a time limitation for traffic infractions, and that therefore, petitioner was not entitled to have a speedy trial of a traffic infraction charge. The Broome County Court, Binghamton, New York, affirmed summarily, and the New York Court of Appeals denied further appeal.

2. New York Criminal Procedure Law, Section 30.30 is unconstitutional insofar as it omits traffic infractions from its prescribed time limitations for trial of Criminal actions. If the statute is not on its face unconstitutional, then the statute is unconstitutional as ap-

plied in the instant case. The decisions of the Courts below that Criminal Procedure Law, Section 30.30 does not apply to traffic infractions, and that therefore, there is no Speedy Trial right in traffic infraction cases in New York State, is not in accord with prior decisions of this Court.

3. The Fourteenth Amendment to the United States Constitution requires that petitioner not be convicted except by Due Process of law; and the Fifth Amendment to the United States Constitution grants to petitioner the right to remain silent, and not to be compelled to be a witness against herself. Prior decisions of this Court have held that implied in the right to Due Process of law is the requirement that in every criminal case the People prove each and every element of the offense charged, including the identity of the defendant, beyond a reasonable doubt, and that defendant not be required to have the burden of disproving any element of the crime charged shifted upon her. The Trial Court's denial of Petitioner's Motion to Dismiss

for failure of the People to prove each and every element of the offense charged, including the identity of defendant, was affirmed by the Broome County Court, Binghamton, New York, and the New York Court of Appeals denied further appeal.

The Trial Court, in denying petitioner's Motion to Dismiss for failure of the People to prove a prima facie case, relied on New York Vehicle and Traffic Law, Section 401(4), which statute creates a presumption of identity by reason of a prior production, at the time of arrest, of a New York State Driver's License. The burden of proof of the identity of the defendant, which is an element of the People's basic case in any criminal offense, is thus shifted to the defendant, in violation of her Due Process rights, her right to remain silent, and her right to have the People prove each and every element of the crime charged beyond a reasonable doubt. The Trial Court, the Broome County Court, and the New York Court of Appeals have impliedly decided that said Vehicle and Traffic Law, Section 410(4)

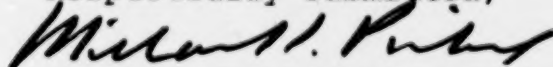
is not unconstitutional, and have therefore decided a Federal question of substance in a way probably not in accord with the applicable decisions of this Court.

4. At the trial, the People's only witness, Trooper Selby, testified that the reason he could not identify the defendant was that it had been such a long time since he had effected the arrest of the defendant. Thus, the denial of petitioner's right to a speedy trial required the reliance of the People upon Vehicle and Traffic Law, Section 410(4), to prove identity of petitioner. The Trial Court's denial of petitioner's motions to dismiss, and the affirmance of said decision by the Broome County Court and the New York Court of Appeals permit defects in the People's case against a defendant, caused by the People's own unconstitutional delay in trial, to be cured by reference to a statute which creates a presumption of identity, thus obviating the requirement that the People prove each and every element of the offense charged beyond a reasonable

doubt. The Courts below have thus decided these questions and constitutional questions of substance in a way probably not in accord with applicable decisions of this Court.

WHEREFORE, petitioner, by her attorney, Michael J. Pichel, an attorney duly admitted to practice before this Court, prays the Court to grant this petition for Writ of Certiorari and to issue such Writ forthwith to the Broome County Court, Binghamton, New York, and to the New York State Court of Appeals, at Albany, New York; and for such other and further relief as to this Court may seem just and proper.

Respectfully submitted,



MICHAEL J. PICHEL
Attorney for Petitioner
Office and P.O. Address
410 College Avenue
Ithaca, New York 14850
(607) 273-1600

APPENDIX

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N. Y. STATE POLICE				UNIFORM TRAFFIC TICKET		NO. G 673792	
CLASS/STATE OR LICENSE	DATE OF BIRTH	<input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE	EXPRESS	TYPE OF REG.	EXPRESS	YOU ARE HEREBY DIRECTED TO APPEAR IN THE	
5 NY	1/16/49		1-81	DAS	2-77	<input type="checkbox"/> CITY <input type="checkbox"/> DISTRICT	<input type="checkbox"/> VILLAGE <input type="checkbox"/> TOWN COURT
MOTORIST IDENTIFICATION NUMBER				VEHICLE IDENTIFICATION NO.			
M07440 104341 152064-49							
LAST NAME FIRST				TYPE AND MAKE OF VEHICLE		ADDRESS	
MILLER CONNIE F.				741 MERC.		Box 228	
STREET AND NUMBER				PLATE NO.		STATE	
1031 TAUGHUCK AVE.				353A2T		NY	
CITY OR TOWN				IN CONNECTION WITH YOUR ALLEGED COMMISSION OF THE FOLLOWING OFFENSE		ON FEB 17 1977 AT 6P M	
LTHACA N.Y. 14850				PC		THE 10 DAY OF FEB 1977	
DATE ISSUED				IN THE OPERATION OF THE VEHICLE			
9-76				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL. IF YOU ARE CONVICTED, NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION YOUR LICENSE TO DRIVE A MOTOR VEHICLE OR MOTORCYCLE, AND YOUR CERTIFICATE OF REGISTRA- TION, IF ANY, ARE SUBJECT TO SUSPENSION AND REVOCATION AS PRESCRIBED BY LAW.				AT 10:10 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM ON ROAD		T-81 SB	
				IN END T-81 SB		CO. OF BROOME	
				IN VIOLATION OF SEC. 1180		SUBD. R	
				70 55			
				<input checked="" type="checkbox"/> SPEEDING		<input type="checkbox"/> TRAFFIC INFRACTION	
				<input type="checkbox"/> OTHER		<input type="checkbox"/> MISDEMEANOR	
DAY POST				TROOP C ZONE 2 STATION Bing			
C0450				4641		100 R. D. SE794	
YOUR FAILURE TO APPEAR MAY RESULT IN A WARRANT FOR YOUR ARREST.							

MICHAEL J. PICHEL

ATTORNEY AT LAW

418 COLLEGE AVENUE

ITHACA, NEW YORK 14850

AREA CODE: 607
TELEPHONE: 273-1808

September 14, 1977

Hon. Duane Algire
Barker Town Justice
P.O. Box 228
Chenango Forks, New York 13746

Re: People v. Connie Miller.

Dear Judge Algire:

Pursuant to your instructions in telephone call of September 13, 1977, I enclose original motion papers and supporting affidavit in the above-entitled matter, returnable September 15, 1977, at 7:30 PM, the time of trial.

With respect to the speedy trial allegation, I refer Your Honor to Criminal Procedure Law, Section 30.30(1)(d), which statute requires that a violation be tried within thirty (30) days of the commencement of a criminal action. The delay in the instant case, through no fault of the defendant, has long exceeded the thirty day period. In fact, even a serious felony, requires a trial within six months of the commencement of a criminal action. Even that six month period has been exceeded here. Surely it cannot be argued that the preparation for trial of a speeding charge requires longer preparation on the part of the people than for the trial of a felony.

I respectfully request that this Court dismiss the charges against defendant herein for the denial to defendant of a speedy trial; for want of prosecution of the people; and in the furtherance of justice.

Thank you.

Respectfully yours,



Michael J. Pichel

MJP:h
cc:

Mr. Michael R. Wright
Criminal Law Associate
Office of the District Attorney of Broome County
Broome County Court House
Binghamton, New York 13901

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STATE OF NEW YORK : COUNTY OF BROOME

TOWN COURT : TOWN OF BARKER

PEOPLE,

vs.

CONNIE FERN MILLER,

Defendant.

INDEX NO. _____

NOTICE OF MOTION.

PLEASE TAKE NOTICE, that upon the annexed affidavit of Connie Fern Miller, sworn to on September 13, 1977, and upon the Uniform Traffic Ticket number 673792 filed against the above named defendant in this Court on the 10th day of February, 1977, and upon all other papers and proceedings herein, the undersigned will move this Court on the 15th day of September, 1977, at 7:30 PM, or as soon thereafter as counsel can be heard, for an order dismissing the Uniform Traffic Ticket herein and for such other and further relief as to the Court may seem just and proper, pursuant to Criminal Procedure Law, Section 170.30, upon the grounds that:

(a) Defendant has been denied her right to a speedy trial as guaranteed by the Sixth Amendment of the United States Constitution, which amendment is made applicable to the State of New York by the Fourteenth Amendment of the United States Constitution, and further as guaranteed by Section 30.20 and Section 30.30 of the Criminal Procedure Law of the State of New York and Article 2,

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Section 12 of the Civil Rights Law of the State of New York; and

(b) Dismissal is required for want of prosecution of the people; and

(c) Dismissal is required in the furtherance of justice.

Dated: September 12, 1977.

MICHAEL J. PICHEL
Attorney for Defendant
Office and Post Office Address
410 College Avenue
Ithaca, New York 14850
(607) 273-1600

To: Mr. Michael R. Wright
Criminal Law Associate
Office of the District Attorney
of Broome County
Broome County Court House
Binghamton, New York 13901

STATE OF NEW YORK : COUNTY OF BROOME

TOWN COURT : TOWN OF BARKER

PEOPLE,

vs.

CONNIE FERN MILLER,

Defendant.

INDEX NO. _____

AFFIDAVIT.

STATE OF NEW YORK

COUNTY OF TOMPKINS

CONNIE FERN MILLER, being duly sworn, deposes and says:

1. Deponent is the defendant in the above-entitled action.
2. Defendant was charged on February 10, 1977, by Uniform Traffic Ticket number G673792, a copy of which is annexed hereto and incorporated herein by reference, with speeding, a traffic infraction.

3. By letter dated February 15, 1977, to the Barker Town Justice, defendant, by her attorney, Michael J. Pichel, entered an appearance for defendant and requested the name of the Assistant District Attorney involved in the case, so that defendant attorney could contact him in this matter. By letter dated February 17, 1977, from the Town Justice, Town of Barker, defendant attorney learned that the Assistant District Attorney handling this matter is one Robert Rose. Defendant's attorney then wrote to Robert S. Rose, Esq. on February 21, 1977, explaining the

incident, and requesting the District Attorney consider an adjournment in contemplation of dismissal or other disposition of this case in the interests of justice. Defendant's attorney then received a letter dated March 2, 1977, from Robert S. Rose, Assistant District Attorney, refusing to permit an ACD. Copies of this correspondence are attached hereto and incorporated herein by reference.

4. Thereafter, on or about March 11, 1977, defendant received a "Notice of Trial" dated March 10, 1977. As defendant had never been arraigned on the charges, nor entered any plea, defendant's attorney wrote to Robert S. Rose, Esq. on or about March 20, 1977, protesting that the said "Notice of Trial", was premature. Then on March 24, 1977, following a telephone conversation with Hon. Duane Algire, Town Justice, Town of Barker, Chenango Forks, New York, defendant's attorney wrote to the said Town Justice, to enter a plea of not guilty on defendant's behalf to the speeding charge, and requesting the statutory 45 days to make motions on defendant's behalf. This request for the statutory adjournment, was the only request for an adjournment or delay, caused by defendant in this case. Except for defendant's request for the statutory 45 days to make motions, defendant has always been ready, willing and able to have a trial upon these charges. Copies of the "Notice of Trial" and correspondence, are attached hereto and incorporated herein by reference.

5. On or about May 24, 1977, defendant received a new "Notice of Trial" signed by one James R. Peterson, "Criminal Law Associate," setting a trial date for June 1, 1977, a copy of which is annexed hereto and incorporated herein by reference.

6. Then on May 27, 1977, defendant received a "Notice of Adjournment", cancelling the trial date of June 1, 1977. The "Notice of Adjournment" was signed by the Assistant District Attorney, Broome County Court House, Binghamton, New York, and, upon information and belief, the adjournment was requested by the People, not by the defendant, nor by the Court. Defendant was ready to go to trial on June 1, 1977. A copy of the "Notice of Adjournment" is attached hereto and incorporated herein by reference.

7. Defendant heard nothing more in regard to this matter, until September 10, 1977, when defendant received a "Notice of Trial" signed by one Michael R. Wright, "Criminal Law Associate", dated September 8, 1977, and setting a trial date for September 15, 1977, some eight months following the alleged speeding incident, and over three months from the trial date of June 1, 1977, which was cancelled by the People. A copy of the "Notice of Trial" dated September 8, 1977, is attached hereto and incorporated herein by reference.

8. Except for the statutory 45 day motion period, the defendant had never requested any adjournment for any reason or at any time herein, and she has caused no delay. Defendant has

always been ready for trial.

9. Upon information and belief, the Barker Town Court has been in session continuously for the entire time of the delay of over eight months herein.

10. No good cause for the said delay has been set forth by the People and no good cause for the delay exists. The People have been derelict in the prosecution of this case.

11. The defendant is an attorney, an associate of Michael J. Pichel, Esq., with offices for the practice of law at 410 College Avenue, Ithaca, New York.

12. The defendant received the within traffic ticket, charging speeding, on February 10, 1977, on her way from Ithaca to Binghamton, where she met with the Character and Fitness Committee, prior to her admission to the Bar on the following day. Defendant was driving a 1974 Mercury automobile, belonging to Michael J. Pichel, after her own car became disabled on the way to Binghamton. At the time the ticket was issued, the speedometer had failed, and defendant was judging her speed by keeping with the moving traffic, when she was issued the ticket.

13. Prior to this incident, defendant never received a moving violation of any kind, and she has been driving an automobile for over ten years.

14. On September 8, 1977, defendant telephoned the Union Town Justice, County of Broome, New York, on behalf of one Vincent R. Franciamone, who was charged with speeding, in the said Union

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Town Court. Defendant spoke with Judge Gaul, Justice of the Union Town Court, and with one Mr. Wright, of the Broome County District Attorney's Office, in regard to a possible disposition of the speeding charge against Mr. Franciamone. Upon information and belief, the Mr. Wright, to whom defendant spoke on September 8, 1977, is the same Michael R. Wright, "Criminal Law Associate", whose signature appears on the "Notice of Trial" dated September 8, 1977, received by defendant, on September 10, 1977. Upon information and belief, the prosecution of the within speeding charge against defendant has been resurrected by the People in bad faith, and in retaliation for defendant's efforts on behalf of said Vincent R. Franciamone, to reach a disposition of the Franciamone case.

WHEREFORE, defendant respectfully prays that this Court issue an order dismissing the charges and the said Uniform Traffic Ticket number G673792 against the defendant, and granting such other and further relief as to the Court may seem just and proper, pursuant to Section 170.30(1) of the Criminal Procedure Law, upon the grounds that:

(a) Defendant has been denied her right to a speedy trial as guaranteed by the Sixth Amendment of the United States Constitution, which amendment is made applicable to the State of New York by the Fourteenth Amendment of the United States Constitution, and further as guaranteed by Section 30.20 and Section

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30.30 of the Criminal Procedure Law of the State of New York and Article 2, Section 12 of the Civil Rights Law of the State of New York; and

(b) Dismissal is required for want of prosecution of the People; and

(c) Dismissal is required in the furtherance of justice.

Connie Fern Miller
CONNIE FERN MILLER

Sworn to before me this

13th day of September, 1977.

Michael J. Pichel
Notary Public.

MICHAEL J. PICHEL
Notary Public, State of New York
No. 8364573
Qualified in Tompkins County
My Term Expires March 30, 1978

A-10

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N. Y. STATE POLICE				UNIFORMA TRAFFIC TICKET				NO. G 673792			
CLASS/STATE OF RESIDENCE	DATE OF BIRTH	SEX	AGE	TYPE OF REG.	EXPIRES	YOU ARE HEREBY DIRECTED TO APPEAR IN THE					
5 NY	1/16/49	♀ FEMALE	1-81	DAS	2-77	CITY DISTRICT VILLAGE TOWN COURT					
MOTORIST IDENTIFICATION NUMBER				VEHICLE REGISTRATION NO.				CITY OF BARKER			
107440 104341 152074-49				741 MERC.				Box 228			
LAST NAME FIRST				PLATE NO.				STATE			
MILLER CONNIE F.				353A2T				NY			
STREET AND NUMBER				IN CONNECTION WITH YOUR				ON FEB 17 1977 AT EP			
1031 TAUGHANCK BLVD.				ALLEGED COMMISSION OF THE				174 THE 10 DAY OF FEB 1977			
CITY OR TOWN				FOLLOWING OFFENSE				COMMITTED ON			
I THACA NY 14850				COMMITTED ON				COMMITTED ON			
DATE ISSUED				IF THE OPERATOR THE CHARGE				IF THE OPERATOR THE CHARGE			
4-76				YES NO				YES NO			
A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL IF YOU ARE CONVICTED, NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION YOUR LICENSE TO DRIVE A MOTOR VEHICLE OR MOTORCYCLE, AND YOUR CERTIFICATE OF REGISTRATION, IF ANY, ARE SUBJECT TO SUSPENSION AND REVOCATION AS PRESCRIBED BY LAW.				AT 10:10 PM ON				T 81 58			
YOUR FAILURE TO APPEAR MAY RESULT IN A WARRANT FOR YOUR ARREST.				IN VIOLATION OF SEC. 1180				SUBD. R			
SPEEDING 70 MPH IN 55 MPH ZONE				SPEEDING 70 MPH IN 55 MPH ZONE				SPEEDING 70 MPH IN 55 MPH ZONE			
OTHER				OTHER				OTHER			
DAY POST 0450				TROOP C ZONE 2 STATION Bing				TROOP C ZONE 2 STATION Bing			
SHELD				OFFICER'S NAME (PRINT)				OFFICER'S NAME (PRINT)			
dell				10- R. D. SETRY				10- R. D. SETRY			

A-11

February 15, 1977

Barker Town Justice
Box 228
Chenango Forks, New York 13746

Re: People v. Connie E. Miller, Uniform Traffic
Ticket number G673792.

Dear Judge:

Please accept this letter as an appearance for
the above defendant, my associate, Connie Miller. Will
you please send me the name and address of the Assistant
District Attorney who acts as prosecutor in your County
so that I can contact him in this matter prior to any
further proceedings.

Thank you.

Respectfully yours,

Michael J. Pichel

MJP:h

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DUANE ALGIRE, JUSTICE
TOWN OF BARKER
P. O. BOX 228
CHENANGO FORKS, N. Y. 13746

February 17, 1977

Michael J. Pichel
410 College Avenue
Ithaca, N. Y., 14850

Mr. Pichel:

Re: Connie F. Miller

The Assistant District Attorney handling the Town of Barker
is Robert Rose. He can be contacted at 607 772-2423.

Chris Gillette

Christine L. Gillette
Court Clerk

clg

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February 21, 1977

Robert S. Rose, Esq.
Broome County Assistant
District Attorney
7 Stearns Road
Binghamton, New York 13905

Re: Connie Fern Miller, Uniform Traffic Ticket
number G673792, Town of Barker.

Dear Mr. Rose:

My associate, Connie Miller, was issued a traffic ticket in the Town of Barker, on February 10, 1977, on her way from Ithaca to Binghamton, where she was with the Character and Fitness Committee, prior to her admission to the Bar on the following day.

She was driving my 1974 Mercury automobile, after her own car became disabled on the way to Binghamton. At the time the ticket was issued the speedometer had failed, and Connie was judging her speed by keeping with the moving traffic, when she was issued the ticket.

Before this, she never received a moving violation of any kind, and she has been driving an automobile for over ten years.

In view of the above, I respectfully suggest that an adjournment in contemplation of dismissal would be in the interest of justice.

She is very concerned about her record, and her insurance rates, and will appreciate your consideration in this matter. Please advise.

Yours truly,

Michael J. Pichel

MJP:h

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OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF BROOME
BINGHAMTON, NEW YORK 13901
(607) 733-2400

DISTRICT ATTORNEY
PATRICK D. MONSIEUR

ASSISTANT DISTRICT ATTORNEYS
PATRICK H. MATTHEWS
MARTIN E. SMITH
STANLEY L. SORDE
GARY L. SHARP
G. PETER VAN LAMER
ROBERT L. SOBE
INVESTIGATOR
FRANCIS C. FLYNN, JR.

March 2, 1977

Michael J. Pichel, Esq.
410 College Avenue
Ithaca, New York 14850

Re: People vs Connie Miller


Dear Mr. Pichel

Thank you for your recent letter concerning the above referenced speeding ticket.

I can completely understand your concern but I am sorry to say, however, that I can find no reason on the basis of your letter to justify an ACD in this situation.

Please do not hesitate to give me a call if you wish to discuss this matter further.

Very truly yours,


Robert S. Rose
Assistant District Attorney

RSR:jma

A-15

STATE OF NEW YORK : : COUNTY OF BROOME
TOWN COURT : : TOWN OF BARKER

THE PEOPLE OF THE STATE OF NEW YORK,

-vs-

NOTICE OF TRIAL

CONNIE MILLER,

Defendant,

PLEASE TAKE NOTICE that the above-named Defendant having entered a plea of "not guilty" in the above-entitled Court to a charge alleging Speeding, in violation of §(§) 1180B of the V & T Law, the above-entitled case will be brought to trial before said Court at the Chenango Forks Elementary School, in the Town of Barker, Broome County, New York, on the 24th day of March, 1977 at 9:00 a.m./p.m., or as soon thereafter as the case may be heard.

PLEASE TAKE FURTHER NOTICE that pursuant to Section 710.30 of the Criminal Procedure Law, the People of the State of New York intend to offer at the trial of the above Defendant, evidence of certain confessions and admissions made by said Defendant together with evidence identifying the Defendant as the person who committed the offense charged, and that if said Defendant desires to suppress such evidence or any part thereof from use as evidence, a motion to that effect must be served upon the undersigned at least ten days prior to said trial date, in which event a hearing relating to the motion for suppression will be held at the time and place indicated above, with the trial of said case to immediately follow the conclusion of said hearing, and

YOU WILL PLEASE TAKE FURTHER NOTICE that a demand for a jury trial, when permitted by law, must be made at least six days prior to the scheduled trial date, and

YOU WILL PLEASE TAKE FURTHER NOTICE that in the event a jury trial is demanded, such will be drawn by the Court without respective counsel being present, unless the Court has otherwise been informed in writing at least ten days prior to the scheduled trial date. Failure to make such request will be deemed a waiver.

DATED: March 10, 1977

TO: Honorable Duane Algire

Connie F. Miller

Defendant

Michael Pichel, Esq.

Attorney for Defendant

Trooper R. D. Selby

Complainant

YOURS, etc.,

PATRICK D. MONSERRATE
District Attorney
Broome County, New York
Broome County Court House
Binghamton, New York 13901

ROBERT S. ROSE
Assistant District Attorney

MICHAEL J. PICHEL
ATTORNEY AND COUNSELOR AT LAW
410 College Avenue
Ithaca, New York 14850

March ²⁰~~18~~, 1977

Robert S. Rose, Esq.
Broome County Assistant
District Attorney
7 Stearns Road
Binghamton, New York 13905

Re: People v. Connie Miller, Barker Town Court.

Dear Mr. Rose:

I received your notice of trial dated March 10, 1977, in the above.

I believe that such notice is a bit premature. There has been no plea entered yet. The defendant has not even been arraigned to date.

I also have your letter of March 2, 1977, I received both letters at the same time as I have been away from my office on a short vacation.

In your letter of March 2, you stated that you could find no reason to justify an ACD in this situation. In view of Miss Miller's absolutely spotless driving record and the other matters which I mentioned, what disposition would you agree to.

Yours truly,

Michael J. Pichel

Michael J. Pichel

MJP:h

cc: Hon. Duane Algire
Barker Town Justice
P.O. Box 228
Chenango Forks, New York 13746

*I believe this matter can be disposed of,
and will appreciate your consideration
Mike Pichel*

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March 24, 1977

Hon. Duane Algire
Town Justice
Town of Barker
P.O. Box 228
Changngo Forks, New York 13746

Re: People v. Connie Miller.

Dear Judge Algire:

This is to confirm our telephone conversation of yesterday afternoon.

Miss Miller enters a plea of not guilty to the charge in your Court and I request the statutory 45 days to make motions on her behalf. I am hopeful that Mr. Rose and I might come to some settlement and can jointly move the Court in that regard in the meantime.

Respectfully yours,

Michael J. Pichel

MJP:h
cc: Robert S. Rose, Esq.
Broome County Assistant
District Attorney
7 Stearns Road
Binghamton, New York 13905

A-18

STATE OF NEW YORK : : COUNTY OF BROOME
TOWN COURT : : TOWN OF BARKER

THE PEOPLE OF THE STATE OF NEW YORK,

-vs-

NOTICE OF TRIAL

CONNIE F. MILLER
1031 Taughneck Blvd.
Ithaca, New York

PLEASE TAKE NOTICE that the above-named Defendant having entered a plea of "not guilty" in the above-entitled Court to a charge alleging Speeding, in violation of §(§) 1180B of the V & T Law, the above-entitled case will be brought to trial before said Court at the Chenango Forks Elementary School, in the Town of Barker, Broome County, New York, on the 1st day of June, 1977 at 1:00 P.M., or as soon thereafter as the case may be heard.

PLEASE TAKE FURTHER NOTICE that pursuant to Section 710.30 of the Criminal Procedure Law, the People of the State of New York intend to offer at the trial of the above Defendant, evidence of certain confessions and admissions made by said Defendant together with evidence identifying the Defendant as the person who committed the offense charged, and that if said Defendant desires to suppress such evidence or any part thereof from use as evidence, a motion to that effect must be served upon the undersigned at least ten days prior to said trial date, in which event a hearing relating to the motion for suppression will be held at the time and place indicated above, with the trial of said case to immediately follow the conclusion of said hearing, and

YOU WILL PLEASE TAKE FURTHER NOTICE that a demand for a jury trial, when permitted by law, must be made at least six days prior to the scheduled trial date, and

YOU WILL PLEASE TAKE FURTHER NOTICE that in the event a jury trial is demanded, such will be drawn by the Court without respective counsel being present, unless the Court has otherwise been informed in writing at least ten days prior to the scheduled trial date. Failure to make such request will be deemed a waiver.

DATED: May 23, 1977

TO: Honorable Duane Algire

Connie F. Miller
Defendant

Michael Pichel
Attorney for Defendant

Trp. R. D. Selby
Complainant

YOURS, etc.,

PATRICK D. MONSERRATE
District Attorney
Broome County, New York
Broome County Court House
Binghamton, New York 13901

JAMES R. PETERSON
CRIMINAL LAW ASSOCIATE

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STATE OF NEW YORK :: COUNTY OF BROOME
TOWN COURT :: TOWN OF BARKER

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

CONNIE F. MILLER

PLEASE TAKE NOTICE that the trial originally scheduled in
the above captioned matter for June 1, 1977 @ 1:00 p.m.

has been adjourned. You will be notified shortly of the new trial
date.

YOURS, etc.,

Assistant District Attorney
Broome County Courthouse
Binghamton, New York

TO: Hon. Duane Alsire
Connie F. Miller
Michael Pichel, Esq.

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COUNTY OF NEW YORK :: COUNTY OF BROOME
TOWN COURT :: TOWN OF BARKER

THE PEOPLE OF THE STATE OF NEW YORK,

-vs-

CONNIE F. MILLER
Defendant,

NOTICE OF TRIAL

PLEASE TAKE NOTICE that the above-named Defendant having entered
a plea of "not guilty" in the above-entitled Court to a charge alleging
Speeding, in violation of §(§) 1157b
of the V & T Law, the above-entitled case will be
brought to trial before said Court at Chenango Forks Elem. School
in the Town of Barker
Broome County, New York, on the 15th day of September, 1977
at 7:30 A.M./p.m., or as soon thereafter as the case may be heard.

PLEASE TAKE FURTHER NOTICE that pursuant to Section 710.30 of the
Criminal Procedure Law, the People of the State of New York intend to
offer at the trial of the above Defendant, evidence of certain confessions
and admissions made by said Defendant together with evidence identifying
the Defendant as the person who committed the offense charged, and that
if said Defendant desires to suppress such evidence or any part thereof
from use as evidence, a motion to that effect must be served upon the
undersigned at least ten days prior to said trial date, in which event a
hearing relating to the motion for suppression will be held at the time
and place indicated above, with the trial of said case to immediately
follow the conclusion of said hearing, and

YOU WILL PLEASE TAKE FURTHER NOTICE that a demand for a jury trial,
when permitted by law, must be made at least six days prior to the
scheduled trial date, and

YOU WILL PLEASE TAKE FURTHER NOTICE that in the event a jury trial
is demanded, such will be drawn by the Court without respective counsel
being present, unless the Court has otherwise been informed in writing
at least ten days prior to the scheduled trial date. Failure to make
such request will be deemed a waiver.

DATED: September 8, 1977

TO: Honorable Hon. Frederick P. Conte
Connie F. Miller
Defendant
Michael Pichel
Attorney for Defendant
Tpr. Selby
Complainant

YOURS, etc.,

PATRICK D. MONSERRATE
District Attorney
Broome County, New York
Broome County Court House
Binghamton, New York 13901

MICHAEL R. WRIGHT
Criminal Law Associate

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STATE OF NEW YORK
COUNTY OF BROOME
TOWN COURT
TOWN OF BARKER

PEOPLE,

vs.

CONNIE FERN MILLER,
Defendant.

NOTICE OF MOTION and
SUPPORTING AFFIDAVIT

MICHAEL J. PICHEL
ATTORNEY
OFFICE AND POST OFFICE ADDRESS
410 COLLEGE AVENUE
ITHACA, NEW YORK 14850
TELEPHONE: 372-1900
AREA CODE: 607

A-22

STATE OF NEW YORK: :COUNTY OF BROOME
TOWN COURT : :TOWN OF BARKER

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-vs-

CONNIE F. MILLER,
Defendant.

TO: HONORABLE STEPHEN SMYK, Broome County Judge, and
WILLIAM E. D. BARLOW, Broome County Clerk

Pursuant to the annexed Notice of Appeal in the above-
entitled action dated September 30, 1977, which appeals
from a decision rendered September 15, 1977, in favor of the
Plaintiff.

I DO RESPECTFULLY RETURN HERewith original transcription
of Pre-Trial Motions.

Dated at Chenango Forks, New York
this 9th day of November, 1977.

Duane Algire
DUANE ALGIRE
Barker Town Justice

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STATE OF NEW YORK: :COUNTY OF BROOME
TOWN COURT : :TOWN OF BARKER

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-vs-

CONNIE F. MILLER,
Defendant.

At a trial in the above-entitled matter held on
September 15, 1977 at Town Court, Town of Barker, before
Hon. Duane Algire, Barker Town Justice.

APPEARANCES: MICHAEL WRIGHT
 District Attorney's Office
 County of Broome
 Office & P. O. Address
 County office Building
 Binghamton, New York

MICHAEL J. PICHEL
Attorney for the Defendant
Office & P. O. Address
410 College Avenue
Ithaca, New York 14850

HON DUANE ALGIRE
Barker Town Justice

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1
BY THE COURT: State of New York versus Connie F. Miller.
The defendant's attorney has a Pre-Trial
motion, I believe.

BY MR. PICHEL: Yes, sir.

BY THE COURT: Is this the Pre-Trial motion that I have
before me here?

BY MR. PICHEL: Yes, sir. This is a motion on behalf of
the defendant for dismissal on three
grounds. One that defendant was denied
the right to a speedy trial as guaranteed
by the First Amendment of the United States
Constitution and as further guaranteed by
Section 30.20 and 30.30 of the Criminal
Procedure Law of the State of New York
and Article 2 Section 12 of the Civil Rights
Law of the State of New York. Secondly,
this motion for dismissal was required for
want of prosecution by the People and
thirdly the dismissal was required in the
furtherance of justice. The defendant was
charged on February 10, 1977 by Uniform
Traffic Ticket #G673792 with speeding, a
traffic infraction. On February 15, 1977
I made an appearance for the defendant and
requested the name of the District Attorney

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to contact him regarding this matter. I received a letter from the Town Justice dated February 17 and I wrote to the Assistant District Attorney requesting an Adjournment in Contemplation of Dismissal which my request was denied. On March 11, 1977 I received a Notice of Trial dated March 10 and since the defendant has not been arraigned or entered any plea I contacted the Court and the Assistant District Attorney and requested that the defendant be allowed to enter a plea and be arraigned and the trial then adjourned. The defendant entered a plea of not guilty and requested the statutory 45 days to make motion on March 24, 1977 by telephone. Except for this 45 day motion time, the defendant has always been ready, willing and able to have a trial on this charge. On May 24, I received a Notice of Trial signed by Mr. Peterson, Criminal Law Associate of the Broome County District Attorney, setting a trial date for June 1. And the defendant attempted to appear and

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have a trial on that date except on May 27 of 1977 we received a Notice of Adjournment cancelling the trial date of June 1. The adjournment notice was signed by an Assistant District Attorney of Broome County and no adjournment was requested then or ever after by the defendant. The defendant does not know why the adjournment was requested. Nothing else was ever heard from the People or the Court until September 10, a number of months later when I received another Notice of Trial signed by Michael Wright, Criminal Law Associate of the Broome County District Attorney, setting this trial for tonight, September 15. That is 8 months in all from the incident and over 3 months from the first trial date of June 1. As I mentioned there was no adjournment requested by the defendant except for the 45 day motion period which expired before the June 1 trial date. I don't believe that any cause for the delay has ever been set forth by the District Attorney's

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Office and the defendant alleges that there is no real cause. That the People have been derelict in the prosecution of this case. In support of the defense's motion for dismissal and interest of justice she has explained that on the date of the charge she was on her way from Ithaca, New York to Binghamton where she was to meet with the Character and Fitness Committee of the New York State Bar. The defendant is an attorney now and on the date of the speeding charge she was an advocate to be admitted to the Bar. Prior to her making her way to Binghamton, her automobile became disabled and she was required to obtain another car which she did obtain my car and as she was on her way to Binghamton the speedometer failed and she was judging her speed by staying within the line of traffic. Prior to this incident, the defendant has never received any violation of any kind and she has been driving an automobile for over 10 years. On September 8 of 1977,

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defendant in her capacity as an attorney telephone the Union Town Justice on behalf of a defendant, Vincent F. Franciamone, who was charged with speeding. At that time she spoke with Judge Gaul, Union Town Justice and Mr. Wright of the Broome County District Attorney's Office in regards to a possible disposition of this speeding charge against Mr. Franciamone and it was her contention that it was her phone call to Judge Gaul and her conversation with Mr. Wright on behalf of Mr. Franciamone that this whole case and she moves that this was resurrected on behalf of the People possibly in retaliation of her efforts on behalf of Mr. Franciamone because the Notice of Trial was signed by Mr. Wright and issued the same day that she made the telephone call. I submitted a memorandum of law in this regards setting forth the history of constitution and statutory rights to a speedy trial. I don't know if the court had an opportunity to examine this

A-24

BY THE COURT:

as yet.

Yes.

BY MR. PICHEL:

Well, I would like to make a few points. The Criminal Procedure Law Section 30.30 defines a speedy trial in terms of specific time limitations requiring dismissal of the charges when the trial doesn't occur in the designated time period. It sets forth the more serious charge, this is on page 7 of my Memorandum of Law, it sets forth the more serious the charge the lower time is allowed before the case must be brought to trial or dismissed. Felonys must be brought to trial within 6 months, a Class A Misdemeanor 90 days and a Class B Misdemeanor 60 days and a Violation must be brought to trial within 30 days. It is obvious that the legislature setting forth the times with a shorter time period for the less serious charge. This is a mere traffic infraction and it should be tried within the 30 days permitted for a violation and a much longer time period has gone by even if

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the clock didn't start running until June 1, we are now 3 months later which is three times as long as the most innocuous violation, that is we are more than a Class B Misdemeanor and a Class A Misdemeanor. Only a Felony would go on any longer than this. I don't think the prosecution has any good cause whatsoever. I have cited a number of cases including traffic violations which the courts have dismissed for want of prosecution for this type of time table.

BY THE COURT:

In regards to the section pertaining to the conversation with Judge Gaul, I was not aware of this conversation with Judge Gaul nor have I ever heard the other defendant's name. Barker Justice Court, mine specifically, I set up the trials, the District Attorney's Office doesn't set up the trials.

BY MR. PICHEL:

I see.

BY THE COURT:

I had no knowledge.

BY MR. PICHEL:

Just a coincidence.

BY THE COURT:

Apparently a coincidence because I knew

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nothing whatsoever, In fact I find it difficult to pronounce the gentleman's name. But I set up the trials and I do it on a basis of the older ones and I set this up in the District Attorney's Office. Alright, in regards to your motion of a speedy trial. There is case law in Broome County, I have read it but I cannot recite verbatim.

BY MR. WRIGHT:

I have that.

BY THE COURT:

If you would, please.

BY MR. WRIGHT:

The case is People versus Zagorsky.. 73 Misc. 2nd 420, Broome County Court Decision dated 1973, in which the Court stated and this is a brief summation: The strict time limitation of the Criminal Procedure Law Section 30.30 do not apply to traffic infractions and the defendant charged with such an infraction is left to the traditional speedy trial remedy found in Criminal Procedure Law Section 30.20. I also read that decision, your honor, and basically the case was where a traffic infraction had been on trial.

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BY THE COURT:

I have the total case in my files. This came up one time in the past and I requested a copy of the trial and I have that in my files but I say I couldn't recite it verbatim. I don't recollect the exact amount of time but I believe as I remember it was a 12 month period involving the date of the arrest until the trial and the County Court decreed at that time that was not an unreasonable length of time. So counsel in regards to that particular section

BY MR. PICHEL:

Your honor, we are not relying strictly on Section 30.30 but I think that just the reasoning of the legislature is obvious that this is less than a violation and there is no reason why it should take more time than anything except the most serious felony and I think that the statute and the case, the Zagorsky case, which I am familiar with, notwithstanding to be constitutional as far as speedy trial has been denied. I refer to People versus Radek, another case where the defendant moved to dismiss

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a Uniform Traffic Ticket and it was less time and the ticket was dismissed. That case is cited on page 15. I have not heard the People set forth any reason for the delay.

BY MR. WRIGHT: The People have not had any chance to set forth any reason for the delay.

BY MR. PICHEL: I think this Court has ruled on my motion.

BY THE COURT: No, I didn't. I was only going over the point of law in regards to this.

BY MR. WRIGHT: Your honor, just very briefly let me answer some of the points that have been made. First of all, we would like to say for the record that I object quite strenuously to the accusations put forth. The Court has stated that it was coincidence but I had no knowledge whatsoever that Miss Miller, who I spoke to on the telephone, was in any way connected with any kind of ticket, traffic case or any other case of her own. As for the delay, the Court is quite aware I am sure of the large number of traffic tickets that are issued in this County and the vast number of cases which

go to trial. It is the job of the District Attorney, of course, to bring to trial as soon as possible and every effort is being made by our office to do so. I am presently employed full time as a Criminal Law Associate for the sole purpose of prosecuting traffic infractions throughout the entire County, 21 Town Court. I make every effort to put the oldest cases first. If there are any special circumstances where one should be advanced, I make every effort possible to so assist the individual. First time I saw this case was when I was reviewing all the files for this Court when you indicated that it was time for trial. Up until I had sent this notice I knew (unintelligible), prior to my arrival with the District Attorney's Office approximately one month ago. Therefore I do not think the delay in this case has been unreasonable. I cannot say specifically why there was no action on this case. Quite often it is caused by illness or inability to appear on the part of the

State Trooper because their duties conflict with trial dates. I do not know, it is our practice not to ask for an adjournment unless there is good reason and I assume in this case there is one, but I cannot in this case tell you exactly what it is.

BY THE COURT:

As I recall the reason for the adjournment is the vacation situation and the Trooper was unavailable at that time. It is difficult to remember because in 2½ years time I have had an excess of 4,000 cases.

BY MR. PICHEL:

I would like to respond to the assertion. Chief Judge Fuld in *People ex rel Franklin versus Warden*, page 16 at the bottom of the page, stated that unreasonable delay in run-of-the-mill criminal cases cannot be justified by simply asserting that the public resources provided by the States criminal justice system are limited and that each case must await its turn. It is the People's job to move this case forward. It is not the defendant's job to move this case forward and anyway the defendant does not have to demand a trial at all.

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I don't believe that is any excuse for delay in this case for over 8 months or over 3 months from the date of the last scheduled trial.

BY MR. WRIGHT:

Your honor, I would like to get on the record in the case that defense attorney referred to does state that a "run-of-the-mill criminal case". The case before us is a traffic infraction not a violation of the Penal Law.

BY THE COURT:

To begin, I would like to set the defendant's counsel's mind at ease over the coincidence involved that the District Attorney's Office doesn't schedule my trials. It is clearly indicated in 30.30 that this is not a criminal case but a traffic infraction not a violation or a misdemeanor and as the County Court has decreed. My recollection is that it is a 12 month period in the case at point. It is the finding of this Court that not an unusual amount of time has passed and during that period of time the defendant has had more than sufficient time to

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prepare herself for trial. So I am going to deny your motion for dismissal on those grounds and you may take an exception if you so desire counsellor.

BY MR. PICHEL: Exception.

BY THE COURT: And again as I say the coincidence basis.

BY MR. PICHEL: Your honor, defense accepts that that is all it was was a coincidence.

BY THE COURT: Is there any further Pre-Trial motions?

BY MR. PICHEL: No, sir.

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STATE OF NEW YORK

COUNTY OF BROOME

This is to certify that the foregoing transcript of Pre-Trial Motions in the matter of The People of the State of New York vs. Connie F. Miller is a true, accurate and complete transcript from a tape recording taken at the aforesaid place September 15, 1977.

Connie F. Miller

A-39

STATE OF NEW YORK : COUNTY OF BROOME
JUSTICE COURT : TOWN OF BARKER

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-vs-

CONNIE P. MILLER,
Defendant.

TO: HONORABLE STEPHEN SMYK, BROOME COUNTY JUDGE, and
WILLIAM E. D. BARLOW, BROOME COUNTY CLERK

I DO RESPECTFULLY RETURN HERewith original transcription
of two portions of trial testimony in the above case.

Dated at Binghamton, New York
this 6th day of January, 1977.

Duane Algire
DUANE ALGIRE
BARKER TOWN JUSTICE

A-40

STATE OF NEW YORK: :COUNTY OF BROOME
TOWN COURT : :TOWN OF BARKER

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-vs-

CONNIE P. MILLER,
Defendant.

At a trial in the above-entitled matter held on
September 15, 1977 at Town Court, Town of Barker, before
Hon. Duane Algire, Barker Town Justice.

APPEARANCES:

MICHAEL WRIGHT
District Attorney's Office
County of Broome
Office & P. O. Address
County office Building
Binghamton, New York

MICHAEL J. PICHEL
Attorney for the Defendant
Office & P. O. Address
410 College Avenue
Ithaca, New York 14850

HON DUANE ALGIRE
Barker Town Justice

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APPENDIX "A"

RICHARD D. SELBY, being duly sworn testifies as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q Officer Selby, what is your occupation?

A Trooper, New York State Police.

Q And how long have you been so employed?

A 12 years.

Q Were you on duty and employed in your capacity as a New York State Trooper on the 10th day of February, 1977 at approximately 10:10 a.m.?

A Yes sir.

Q And did you have occasion to issue Simplified Traffic Information #G673792?

A Yes sir.

Q To whom did you issue that?

A Connie Miller.

Q How was it you were able to identify the person you issued the ticket to?

A She produced a valid New York State driver's license.

Q What violation was that ticket issued for?

A Section 1180 Subdivision B of the Vehicle and Traffic Law.

Q Where did the violation occur?

A Interstate 81, Town of Barker, County of Broome, State of New York.

Q Did you sign and affirm that Simplified Traffic Information

under penalty of perjury?

A Yes sir.

Q Is the individual to whom you issued that ticket to in court today?

A I can't identify her.

Q At the time that you issued the Simplified Traffic Information the individual that you issued the ticket to produced a valid driver's license, isn't that correct?

A That's correct.

Q And I think it was issued to a Connie P. Miller?

A That's correct.

Q And is Connie P. Miller the name of the defendant in this case?

A Yes sir.

Q Is the reason you were unable to identify the defendant due to a lack of recollection?

A Well, I issue so many tickets since that time and see so many people, I just can't remember.

APPENDIX "B"

MOTION BY MR. PICHEL AT END OF PEOPLE'S CASE.

BY MR. PICHEL:

I make a motion that the traffic ticket be dismissed. The officer was unable to identify the defendant in court today and I believe that the prosecution has failed to prove a prima facie case.

BY THE COURT:

There is a section in the Vehicle and Traffic Law that covers that particular statute. Are you familiar with that?

BY MR. PICHEL:

No I am not, your honor.

BY THE COURT:

I had this come up last summer and the section of the Vehicle and Traffic Law quotes that the officer must assume that the bearer of the license is the individual who; I can't recall the exact wording of the statute but it indicates that the owner or individual in possession of the license, the officer must assume that is the person described thereof. It is in the Vehicle and Traffic Law. I should have written the statute down, but I remember it.

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If you want to take an exception on that and at a later date if you choose to appeal this, it is something that can be researched without too much difficulty. I am not familiar with the statute as it is, but I am aware of its existence having it come up in the past. I am going to deny your motion on those grounds. I had one particular case come up where the counsel had three defendants with him in the back of the room and this is the one it came up as because the arresting officer at that time couldn't identify any one of the three defendants. I am going to deny your motion on those grounds. As I say, you may make exception and if you choose to appeal it at a later date, a little research and we could come up with the statute.

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STATE OF NEW YORK
COUNTY OF BROOME

This is to certify that the foregoing transcript of two portions of a trial in the matter of the People of the State of New York vs. Connie P. Miller is a true and accurate transcript from a tape recording taken on September 15, 1977.

Janice M. Phelps
Janice M. Phelps

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RECEIPT FOR FINE

2952

DUANE ALGIRE, Town Justice
TOWN OF BARKER
Broome County, N. Y.
P. O. Box 228
Chenango Forks, New York 13746

Received from Connie Miller Sept. 15, 19 77
Twenty Five \$ 25.00

Twenty Five DOLLARS

for Fine Paid re: Violation of Article 1180 Subd. B of the Vehicle
and Traffic Laws of the State of New York.

Ticket No. 673792

Algire
Town Justice

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STATE OF NEW YORK : COUNTY OF BROOME
LOCAL CRIMINAL COURT : TOWN OF BARKER

PEOPLE OF THE STATE OF NEW YORK

VS.

INDEX NO. _____

CONNIE FERN MILLER, DEFENDANT.

NOTICE OF APPEAL.

SIRS:

PLEASE TAKE NOTICE that the defendant, Connie Fern Miller, hereby appeals to the County Court of Broome County from the judgment of the LOCAL CRIMINAL COURT, TOWN OF BARKER, made herein on the 15th day of September, 1977, convicting the defendant of a violation of section 1180 (b) of the VEHICLE AND TRAFFIC LAW of the State of New York, and sentencing her to pay a fine of \$25.00.

DATED: September 30, 1977.

Yours, etc.,

MICHAEL J. PICHEL
Attorney for Defendant
Office and Post Office Address
410 College Avenue
Ithaca, New York 14850
(607) 272-8039

To: Hon. Duane Algire
Barker Town Justice
P.O. Box 228
Chenango Forks, New York 13746

District Attorney
County of Broome
Stearnes Road
Binghamton, New York 13905

County Clerk
County of Broome
Broome County Courthouse
Binghamton, New York 13901

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STEPHEN SMYK
BROOME COUNTY JUDGE
COURT HOUSE
BINGHAMTON, N. Y. 13901
607 772-8481

February 9, 1979

Connie Fern Miller, Esq.
410 College Avenue
Ithaca, New York 14850

Michael R. Wright, Esq.
Assistant District Attorney
Broome County Office Building
Binghamton, New York 13901

Re: People vs. Connie Fern Miller

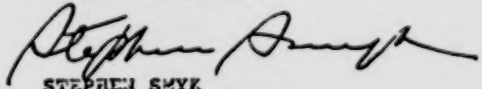
Sir/Madam:

The above named defendant-appellant appeals the September 15, 1977 judgment of the Town Court, Town of Barker, New York, convicting her of speeding in violation of Section 1130-b of the Vehicle and Traffic Law.

We have carefully reviewed the record and find no merit in the arguments raised by the appellant. Accordingly, the conviction below is affirmed.

This decision shall also constitute the order of the Court.

Very truly yours,


STEPHEN SMYK
Broome County Judge

SS/j

cc: Hon. Duane Algire
Town of Barker Justice

A49

State of New York
Court of Appeals

BEFORE: HON. DOMENICK L. GABRIELLI, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK

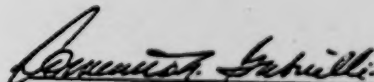
against

CERTIFICATE
DENYING
LEAVE

CONNIE FERN MILLER,
Movant-appellant

I, DOMENICK L. GABRIELLI, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above-named appellant for a certificate pursuant to CPL 480.20 and upon the record and proceedings herein,* there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at Bath, New York
April 4, 1979


Associate Judge

*Description of Order: Order of the Broome County Court entered February 9, 1979 which affirmed a judgment of the Town Court of the Town of Barker, rendered on September 15, 1977.